PART II

PRIVATE RIGHTS
PROPERTY INTERESTS AND LIENS

CHAPTER 500

ESTATES IN REAL PROPERTY

500.01 DIVISION AS TO QUANTITY

Indian titles; aboriginal ownership as a relevant issue in title examinations where a chain of title is traced back to a federal grant or patent. 32 MLR 28.

Where in order to have a school near his home a landowner permitted a school building to be built on his property and there was no deed of conveyance or any agreement upon which a leasehold could be founded but there was an oral offer and acceptance under which the school district used the school site, all the school district had was a mere license, and upon consolidation of the school district with others and abandonment of the school site, the building could be removed and disposed of by the newly organized school district. OAG July 24, 1951 (622-J-20).

500.02 ESTATES OF INHERITANCE

The use of the phrase "so long as the land shall be used for school purposes" in a conveyance to a school district is a grant in fee, not on condition. OAG Nov. 7, 1950 (622-I-13).

Title to real estate vests in the heirs upon the death of the owner and the heirs thereupon become freeholders. OAG Dec. 21, 1948 (771-B).

500.05 DIVISION OF REALTY OR PERSONALTY

Interest necessary to support an exemption claim. 34 MLR 350.

The fee of land vested in the United States is not subject to taxation by the state unless the United States has consented to such taxation, but the leasehold estate of the lessee in the proposed lease is subject to taxation by the state as real property. OAG Jan. 19, 1953 (414-A-2).

In an executory contract for the sale of land both the vendor and the purchaser are freeholders. OAG Oct. 4, 1950 (771-B).

The owner of a cemetery lot is a freeholder provided that the deed of conveyance to him conveys an estate of inheritance. OAG May 12, 1953 (771-B).

500.07 ESTATES IN POSSESSION

A ten year lease witnessed and acknowledged as to the lessor is entitled to record although the lessee who executed the lease did not acknowledge it and the lease shows no witnesses as to the execution by the lessee. OAG Sept. 26, 1952 (373-B-17-E).

500.09 REVERSIONS

Under the "worthier title doctrine" and unless additional language or circumstances show a contrary intent, where a grantor conveys an interest of land to his heirs or an interest in things other than land to his next of kin, the conveyance is a nullity in that it designates neither a grantee nor the type of interest of a grantee,

therefor the grantor retains a reversion in fee simple. Shaw v Arnett, 226 M 425, 33 NW(2d) 609.

Under a deed conveying land to the grantor's son for life with remainder in fee to his children, the grantor retains a reversion in fee simple and the land reverts to his heirs, in case he dies leaving no children or descendants. Shaw v Arnett, 226 M 425, 33 NW(2d) 609.

Where the Baudette chamber of commerce conveyed certain real estate to the State of Minnesota for use as a fish hatchery or other public purposes, the land to revert when not used for said purposes, and where under Laws 1949, Chapter 218, the commissioner of conservation was authorized to transfer and turn over to the village of Baudette the fish hatchery building with fixtures and appurtenances which conveyance was not to include fish hatchery equipment located on the land in question, the land would revert back to the chamber of commerce upon the breach of the condition. If the building is so attached to the land that it cannot be severed the title of the building follows the title of land in case the reversion clause becomes operative. OAG June 13, 1949 (469-A-15).

500.11 FUTURE ESTATES, INCLUSIVENESS

If an owner of property intends to make intervivos gift of property in trust, but the title does not pass to the intended third-party trustee for want of delivery of the subject matter or for want of delivery of the instrument of conveyance, no trust is created and the title to the property remains in the owner free of trust. Cooney v Equitable Assurance Society, 235 M 377, 51 NW(2d) 285.

500.12 FUTURE ESTATES; CONTINGENT

HISTORY. RS 1851 c 43 s 13; PS 1858 c 31 s 13; GS 1866 c 45 s 13; GS 1878 c 45 s 13; GS 1894 s 4374; RL 1905 s 3202; GS 1913 s 6663; 1943 c 69 s 1.

500.13 FUTURE ESTATES; RESTRICTIONS ON CREATION

HISTORY. Amended, 1947 c 207 s 1, 2.

Restrictions on creation of future estates. 33 MLR 47.

The trust instrument provided the trustees should not dispose of the stock held in trust for settlor's four children, unless in their judgment there was no reasonable probability that the corporation could be further profitably operated, or unless an opportunity arose for a very advantageous sale demanded by the beneficiaries. Such trust provisions did not unlawfully suspend power of alienation for a period of more than two lives in being. Atwood v Holmes, 224 M 157, 28 NW(2d) 188.

500.14 FUTURE ESTATES; CONSTRUCTION, VALIDITY AND EFFECT OF CREATING INSTRUMENTS

HISTORY. RS 1851 c 43 s 22, 25, 26, 28, 30, 31; PS 1858 c 31 s 22, 25, 26, 28, 30, 31; GS 1866 c 45 s 22, 25, 26, 28, 30, 31; GS 1878 c 45 s 22, 25, 26, 28, 30, 31; GS 1894 s 4383, 4386, 4387, 4389, 4391, 4392; RL 1905 s 3211, 3214, 3215, 3217, 3219, 3220; GS 1913 s 6675, 6676, 6678, 6680, 6681; 1939 c 90; 1939 c 378.

In 1907, a resident of Illinois, his wife, joining, deeded to his unmarried son B, a half section farm in Minnesota, said deed containing the following clause: "to their son * * * to have and to hold the same during his natural life, with remainder in fee to his children; should he die leaving no child or children, or the descendants of a child or children, then the said lands to revert to the heirs of the grantor herein, * * *." A died in 1912. His wife died in 1915. B married in 1917. B had no children. B died in 1946, leaving his widow his sole heir at law. Held that A retained a reversion in the real estate in question. As B died leaving no child or children or descendants of a child or children, the legal effect of the wording of the deed is the same as if the deed had run to B for life with the reversion to the heirs of A. In such a situation A has a reversion in fee simple. The heirs of A must be determined at the time of the death of A. The word "then" in the clause in question means "in that event."

Neither the deed nor the circumstances indicate an intention on the part of A that those who take should be determined as of the death of B. Reversions are vested estates. Laws 1939, Chapter 90, has no application to the case at bar. The widow of B as sole heir of B is entitled to a one-sixth interest in the fee title of the property involved. Shaw v Arnett, 226 M 425, 33 NW(2d) 609.

500.17 FUTURE ESTATES, RENTS AND PROFITS

HISTORY. RL 1905 s 3225-3229; 1953 c 424 s 1.

500.19 DIVISION

Right of a surviving joint tenant to maintain a suit to cancel a deed fraudulently obtained by defendant from a deceased joint tenant. 34 MLR 245.

In ascertaining the meaning in MSA, Section 256.26, Subdivisions 3, 6, and 8, of such legal terms as "lien" and "joint tenancy interests" and the application therein of such legal doctrines as those relative to subjecting real property to liens and the duration, priority, and enforcement thereof, resort may be had to well-settled rules of statutory construction, such as those that the legislature is deemed to use words with their well-settled meaning, that statutes are to be construed with reference to the common law relative to the same subject matter, and that the contemporaneous legislative history may be considered. An old age assistance lien, which the statute cited supra provides shall attach to all real property owned by the recipient of such assistance, including joint tenancy interests, and shall continue until the debt secured thereby shall be satisfied, attaches, where the recipient is one of several owners of real property in joint tenancy, only to the joint tenancy interest of the recipient, and if the recipient dies before the other joint tenants the lien, by reason of the rules governing joint tenancies, terminates with his death and is unenforcible afterward. Application of Gau, 230 M 235, 41 NW(2d) 445.

500.20 DEFEASIBLE ESTATES

Restrictive covenant against occupancy by non-Caucasians; action to foreclose. 31 MLR 385.

Waiver of restrictive covenanta by acquiescence. 32 MLR 524.

Under a showing that restrictions in deeds against the sale of liquor had been abandoned by the entire community since 1933, all concerned are estopped to enforce the restrictions, and the hazard of litigation to enforce the restrictions against the hotel property contracted to be purchased was so negligible as to constitute no valid objection to the title. Casreil v King, 141 N.J. Equity 515, 58 Atlantic (2d) 269.

The failure of a town to use property as a town hall may result in reversion to the original owners. Permitting a village the partial use of the town hall is not a violation of the condition subsequent. OAG April 4, 1951 (434-C-8).

500.22 RESTRICTIONS ON ACQUISITION OF TITLE

HISTORY. RL 1905 s 3235-3239; 1907 c 439; 1911 c 130 s 1; 1945 c 280 s 1; 1947 c 153 s 1; 1953 c 218 s 1.

In validation of alien land law under United Nations charter. 35 MLR 333.

Aliens; constitutional restraints on expulsion or exclusion. 37 MLR 440.

The charter of the United Nations, as a treaty, is paramount to every law of every state in conflict with it. The provisions of the alien land law restricting ownership of real property by aliens who are ineligible for citizenship, viewed in the light of the fact that expansion by congress of the classes of persons eligible to citizenship has left only Japanese aliens ineligible to own real property, and the fact that the restrictions are actually referable to race or color, are unenforcible because contrary to the letter and spirit of the United Nations. The fact that Japan is not a member of the United Nations does not render its nationals ineligible to the guarantees of the charter. Sei Fujii v State, 217 Pac (2d) 481, 218 Pac (2d) 595.